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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

JONATHAN KING,

Defendant and Appellant.

B162370

(Los Angeles County
Super. Ct. No. BA222602)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Norman Shapiro, Judge. Affirmed.

Cara DeVito, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Lance E. Winters and G. Tracey Letteau, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted appellant Jonathan King of two counts of attempted robbery, two counts of robbery, two counts of assault with a firearm, and one count of willfully evading a pursuing peace officer. (Pen. Code, §§ 211; 211, 664; 245, subd. (a)(2); Veh. Code, § 2800.2, subd. (a).) The jury found, as to the robbery and attempted robbery charges, that appellant personally and intentionally used and discharged a firearm (Pen. Code, §§ 12022, subd. (a)(1); 12022.5, subd. (a)(1); 12022.53, subds. (b), (c)). He was sentenced to an aggregate state prison term of 32 years 8 months. Appellant challenges the sufficiency of the evidence in support of the Penal Code section 12022.53, subdivision (c) enhancement. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Prosecution Evidence

Around 2:30 a.m. on September 23, 2001, appellant and an unidentified companion confronted four people at a taco stand. Appellant pointed a handgun at Raul Bravo, told him not to move, and took cash from his pockets. Bravo fled when appellant and his companion turned away. Appellant then ordered Porfiro and Gelacio Amador to raise their arms and demanded money at gunpoint. His companion searched both men. After removing money from Gelacio Amador's pocket, the companion ordered him to surrender a ring, which would not come off his finger. The companion retrieved the gun from appellant, placed it against Gelacio Amador's ribcage and took the ring and a cellular phone from him. Georgina Amador was pulled out of a van and searched by appellant while his companion held the gun.

Appellant and his companion fled, the companion still holding the gun. Raul Bravo pursued them, followed by Gelacio Amador. Appellant fired the gun at Bravo, but it did not discharge. Appellant dropped the gun, picked it up and fired two shots at Bravo. One of the bullets grazed Bravo's wrist. Appellant then shot at Gelacio Amador. Appellant and his companion got into a car and appellant drove away. Pursued by police, appellant exceeded the speed limit and ran several red lights. He was eventually

apprehended, after being chased on foot. A field show-up was conducted. Following a verbal admonition, Bravo and Gelacio Amador identified appellant as one of the robbers.

Defense Evidence

Appellant did not testify.

Los Angeles Police Officer Natalie Humphreys interviewed Raul Bravo and Gelacio Amador within five minutes of the robbery. Each man said he could not identify the person who shot at him. At the field show-up, both men identified appellant as the robber with the gun.

Robert Shomer, an eyewitness identification expert, explained that the reliability for eyewitness identifications of strangers is very low. He also testified as to the factors that can diminish a witness's ability to remember accurately, including the presence of a weapon and as to the suggestibility inherent in field show-ups. He opined that a witness's certainty of identification has no correlation to the accuracy of the identification.

DISCUSSION

Appellant does not dispute there was sufficient evidence he was armed with and personally used a firearm pursuant to Penal Code sections 12022, subdivision (a)(1), 12022.5, subdivision (a)(1), and 12022.53, subdivision (b). However, he contends there was insufficient evidence he personally discharged a firearm within the meaning of Penal Code section 12022.53, subdivision (c).¹ According to appellant, Bravo's testimony "was neither reasonable, credible, nor of solid value" that appellant was the shooter.

¹ Penal Code section 12022.53, subdivision (c) provides: "Notwithstanding any other provision of law, any person who is convicted of a felony . . . [including robbery and attempted robbery] . . . and who in the commission of that felony intentionally and personally discharged a firearm, shall be punished by a term of imprisonment of 20 years in state prison, which shall be imposed in addition and consecutive to the punishment prescribed for that felony."

Resolving all conflicts in the evidence in favor of the judgment based on the whole record, and drawing all reasonable inferences therefrom, we hold substantial evidence supports the jury's finding of the contested enhancement. (*Jackson v. Virginia* (1979) 443 U.S. 307, 319-320; *People v. Staten* (2000) 24 Cal.4th 434, 460.) The record shows that both Bravo and Gelacio Amador chased the robbers, with Bravo in the lead by about 14 feet. Bravo identified appellant as the shooter based on an unobstructed view of him from 22 to 27 feet away.

By detailing what he perceives as critical omissions and contradictions in Bravo's testimony, appellant is inviting us to reweigh the evidence and to engage in speculation, neither of which is the function of an appellate court. (*People v. Culver* (1973) 10 Cal.3d 542, 548; *People v. Berryman* (1993) 6 Cal.4th 1048, 1084, overruled in part on other grounds in *People v. Hill* (1998) 17 Cal.4th 800, 823, fn.1.)

Determining witness credibility is the exclusive province of the trier of fact. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) Here, notwithstanding defense counsel's argument, the jury believed Bravo. The testimony of even a single witness, unless physically impossible or inherently improbable, is sufficient to support the verdict. (*People v. Elwood* (1988) 199 Cal.App.3d 1365, 1372.) Nothing in the record suggests that Bravo's testimony was, as appellant urges, inherently improbable or physically impossible. Appellant's claim to the contrary, Gelacio Amador did not testify that the companion fired the gun at Bravo and himself. Rather, he testified that when appellant and his companion ran from the taco stand, the companion was holding the gun. The companion attempted to shoot Bravo, but the gun malfunctioned and failed to fire. The companion dropped the gun and appellant retrieved it.

Gelacio Amador also testified that he heard rather than saw two shots fired at Bravo, before seeing appellant fire two shots at him. The only conflict in the testimony of Bravo and Gelacio Amador concerns which robber attempted to shoot the gun before dropping it. Both witnesses identified appellant as successfully firing the gun at them,

after he picked it up. Substantial evidence supported the Penal Code section 12022.53, subdivision (c) enhancement as found by the jury.

DISPOSITION

The judgment is affirmed.

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ZELON, J.

We concur:

JOHNSON, Acting P. J.

WOODS, J.